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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MAJED ITANI

Appeal 2016-004923
Application 13/844,454¹
Technology Center 3600

Before NINA L. MEDLOCK, BRUCE T. WIEDER, and
ROBERT J. SILVERMAN, *Administrative Patent Judges*.

WIEDER, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1–15. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ According to Appellant, the real party in interest is SugarCRM, Inc. (Appeal Br. 2.)

CLAIMED SUBJECT MATTER

Appellant’s “invention relates to customer relationship management (CRM) data processing and more particularly to environmentally influenced operation of CRM data processing.” (Spec. ¶ 2.)

Claims 1, 6, and 11 are the independent claims on appeal. Claim 1 is illustrative. It recites:

1. A method for time and location aware customer relationship management (CRM), the method comprising:
obtaining a location for a mobile computing device;
forwarding the location to a CRM application; and,
responsive to identifying a contact in the CRM application that is proximate to the obtained location, retrieving a related data record for the contact from the CRM application and displaying the related record in the mobile computing device in a user interface for the CRM application.

REJECTIONS

Claims 1–15 are rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.

Claims 1–3, 5–8, 10–13, and 15 are rejected under 35 U.S.C. § 102(b) as anticipated by Busch (US 2008/0248815 A1, pub. Oct. 9, 2008).

Claims 4, 9, and 14 are rejected under 35 U.S.C. § 103(a) in view of Busch and Blants (US 6,732,080 B1, iss. May 4, 2004).

ANALYSIS

The § 101 rejection

In 2014, the Supreme Court decided *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347 (2014). *Alice* applies a two-step framework, earlier set

out in *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66 (2012), “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice*, 134 S. Ct. at 2355.

Under the two-step framework, it must first be determined if “the claims at issue are directed to a patent-ineligible concept.” *Id.* If the claims are determined to be directed to a patent-ineligible concept, then the second step of the framework is applied to determine if “the elements of the claim . . . contain[] an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Id.* at 2357 (citing *Mayo*, 566 U.S. at 72–73, 79).

Under step one of the *Alice* framework, we “look at the ‘focus of the claimed advance over the prior art’ to determine if the claim’s ‘character as a whole’ is directed to excluded subject matter.” *Affinity Labs of Texas, LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016) (quoting *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016)). Thus, although we consider the claim as a whole, the “directed to” inquiry focuses on the claim’s “character as a whole.”

With regard to step one, the Examiner determines that “the claims are directed to the abstract idea of providing location-based services to users, which is a fundamental economic practice (widely utilized in targeted marketing, mobile advertising, location-based advertising, and the like).” (Final Action 5.)

Appellant does not argue that the Examiner erred in this determination. (See Appeal Br. 4–12.) Therefore, we are not persuaded that

the Examiner erred in determining that the claims are directed to an abstract idea.

Step two of the *Alice* framework has been described “as a search for an ‘“inventive concept” ’—*i.e.*, an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Alice*, 134 S. Ct. at 2355 (citing *Mayo*, 566 U.S. at 72–73).

Appellant argues that

Appellants’ [sic] invention presents the innovative concept of time and location aware location based services for CRM. This innovative concept is achieved through the identification of a CRM application contact that is proximate to an obtained location for a mobile computing device, the retrieval of a related data record for the contact from the CRM application and the display of the related data record in the mobile computing device.

(Appeal Br. 11.) Appellant further argues that

the innovative concept of time and location aware CRM of Applicants’ [sic] claims are achieved by the acquisition of time and location data in a mobile device and the corresponding identification of a contact in a CRM application so that a record related to the contact is retrieved in the CRM application and thereafter displayed in the mobile device. Accordingly, in contrast to the claims of Internet Patents [*Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343 (Fed. Cir. 2015)], Appellants’ [sic] claim language indicates how the innovative concept is achieved, and therefore, are [sic] statutory under the law.

(*Id.* 12.) We do not find Appellant’s arguments persuasive of error.

“An abstract idea can generally be described at different levels of abstraction.” *Apple Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1240 (Fed. Cir. 2016). Appellant’s argument that the “claim language indicates how the

innovative concept is achieved” (Appeal Br. 12) is, at its core, an argument regarding the level of abstraction at which the abstract idea is expressed.

For example, in *Ultramercial, Inc. v. Hulu, LLC*, the Federal Circuit referred to the district court’s determination “that the abstract idea at the heart of the [patent-in-suit] was ‘that one can use [an] advertisement as an exchange or currency.’” *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 714 (Fed. Cir. 2014). Additionally, the Federal Circuit found

that claim 1 includes eleven steps for displaying an advertisement in exchange for access to copyrighted media. . . . [T]he steps include: (1) receiving copyrighted media from a content provider; (2) selecting an ad after consulting an activity log to determine whether the ad has been played less than a certain number of times; (3) offering the media for sale on the Internet; (4) restricting public access to the media; (5) offering the media to the consumer in exchange for watching the selected ad; (6) receiving a request to view the ad from the consumer; (7) facilitating display of the ad; (8) allowing the consumer access to the media; (9) allowing the consumer access to the media if the ad is interactive; (10) updating the activity log; and (11) receiving payment from the sponsor of the ad.

Id. at 714–15. Even though one may argue that the claim describes “how” the abstract idea is achieved, “[t]his ordered combination of steps recites an abstraction—an idea, having no particular concrete or tangible form.” *Id.* at 715. “Although certain additional limitations, such as consulting an activity log, add a degree of particularity, the concept embodied by the majority of the limitations describes only the abstract idea of showing an advertisement before delivering free content.” *Id.* In short, the combination of claim elements (1–11) did not amount to significantly more than the ineligible concept itself. *See Alice*, 134 S. Ct. at 2355.

Internet Patents is not to the contrary. In *Internet Patents*, the Federal Circuit “agree[d] with the district court that the character of the claimed invention is an abstract idea: the idea of retaining information in the navigation of online forms.” *Internet Patents*, 790 F.3d at 1348. Claim 1 of *Internet Patents* recites “providing an intelligent user interface to an online application comprising the steps of: furnishing a plurality of icons on a web page,” “displaying said dynamically generated online application form . . . wherein said dynamically generated online application form set comprises a state determined by at least one user input; and maintaining said state upon the activation of another of said icons.” *Id.* at 1344–45. Again, even though one may argue that the claim describes “how” the abstract idea is achieved, the ordered combination did not amount to significantly more than the ineligible concept itself and the Federal Circuit affirmed that the claim “is not directed to patent-eligible subject matter.” *Id.* at 1348.

In view of the above, even if one considered claim 1 to “indicate[] how the innovative concept is achieved” (Appeal Br. 12), we are not persuaded that this would result in a determination that the claim recites patent-eligible subject matter.

Additionally, the Specification discloses that the invention can be implemented using generic computer components, e.g., the CRM application may implemented on “a processor of a general purpose computer.” (*See, e.g.,* Spec. ¶ 30.) Thus, the introduction into the claims of a generic mobile computing device and a “CRM application,” i.e., instructions to a generic computer to implement the abstract idea, does not alter the analysis at step two.

[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention. Stating an abstract idea “while adding the words ‘apply it’ ” is not enough for patent eligibility. Nor is limiting the use of an abstract idea “ ‘to a particular technological environment.’ ” Stating an abstract idea while adding the words “apply it with a computer” simply combines those two steps, with the same deficient result. Thus, if a patent’s recitation of a computer amounts to a mere instruction to “implemen[t]” an abstract idea “on . . . a computer,” that addition cannot impart patent eligibility. This conclusion accords with the preemption concern that undergirds our §101 jurisprudence. Given the ubiquity of computers, wholly generic computer implementation is not generally the sort of “additional featur[e]” that provides any “practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself.”

Alice, 134 S. Ct. at 2358 (citations omitted). “[T]he relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea . . . on a generic computer.” *Id.* at 2359. They do not.

Taking the claim elements separately, the function performed by the computing devices at each step is purely conventional. Obtaining, transmitting/forwarding, analyzing/retrieving related records, and displaying data are basic computer functions. In short, each step does no more than require generic computing devices to perform generic computer functions.

Considered as an ordered combination, the computing devices of Appellant’s method add nothing that is not already present when the steps are considered separately. The claims do not, for example, purport to improve the functioning of the computing devices themselves. Nor do they effect an improvement in any other technology or technical field. Instead, the claims at issue amount to nothing significantly more than an instruction

to apply the abstract idea using generic computing devices. That is not enough to transform an abstract idea into a patent-eligible invention. *Id.* at 2360.

Additionally, Appellant does not persuasively argue why the “CRM application” recited in the claims is more than “simply instruct[ing] the practitioner to implement the abstract idea with routine, conventional [programming] activity.” *See Ultramercial, Inc.*, 772 F.3d at 715.

Nor are we persuaded that the claims are analogous to those in *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014). (*See* Appeal Br. 11.) Unlike the present claims, the claims in *DDR Holdings* “specify how interactions with the Internet are manipulated to yield a desired result — *a result that overrides the routine and conventional sequence of events ordinarily triggered by the click of a hyperlink.*” *DDR Holdings*, 773 F.3d at 1258 (emphasis added).

Therefore, we are not persuaded that the Examiner erred in rejecting claim 1 under § 101. Claims 2–15 are not separately argued and fall with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

The § 102(b) rejection

With regard to the § 102(b) rejection, Appellant argues claims 1–3, 5–8, 10–13, and 15 together. (*See* Appeal Br. 12–17.) We select claim 1 as representative. *See* 37 C.F.R. § 41.37(c)(1)(iv).

“[A]n invention is anticipated if the same device, including all the claim limitations, is shown in a single prior art reference.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989).

Busch discloses “[m]ethods and systems that record the location of a user and transmit targeted content to a user based upon their current and past location information.” (Busch, Abstract.) Busch further discloses:

The mobile device collects location information over time and either sends the raw data at a later time; or, the data is processed into a list of traveled routes and visited locations. Thus, the mobile device does not necessarily send current location information. A user profile (or information to identify a user profile stored on a remote server) may also be transmitted to associate the location information with a particular user. Then, a data set is returned containing location based content tailored to the interests or current needs of the user.

(Busch ¶ 341.)

Appellant argues that “Busch lacks the teaching of locating a customer proximate to the location determined for a mobile device.” (Appeal Br. 13.) Claim 1, however, does not recite “locating a customer proximate to the location determined for a mobile device.” (*See* claim 1.) Claim 1 recites “obtaining a location for a mobile computing device.” Claim 1 also recites “responsive to identifying a contact in the CRM application that is proximate to the obtained location, retrieving a related data record” Because Appellant’s argument is not commensurate with the scope of the claim, we do not find the argument persuasive of error.

Nonetheless, we note that Busch discloses “a remote server periodically receives and stores location information associated with a mobile device, such as a mobile phone. The information is sent from the mobile device” (Busch ¶ 335; *see also* Final Action 7.) Busch further discloses that “the location information of the mobile device is sent to the system and compared with information describing the perimeters of business

locations.” (Busch ¶ 338; *see also* Final Action 7.) Busch also discloses that “targeted content (or advertisements) are sent to the user of the mobile device and displayed on the screen of the mobile device. The targeted content is based on various factors, including . . . any business within a radius or perimeter of the user.” (Busch ¶ 368; *see also* Answer 7.)

In other words, Busch discloses a remote server obtaining a location for a mobile device, sending/forwarding that information to a system, comparing that location information with information describing perimeters of business locations/contacts, and, for businesses/contacts identified as within a radius or perimeter of the user, sending targeted content/data records based on the businesses/contacts to the mobile device for display. Thus, Busch teaches sending targeted content based on identifying a business/contact proximate the location obtained for the user/mobile device.

Appellant also argues that the “Examiner’s remarks had been directed to the equivalence of the ‘user profile’ of paragraph [0341] to the ‘contact’ of claim 1.” (Appeal Br. 14.) And, Appellant further argues, “the user profile of paragraph [0341] is not a contact in a CRM application.” (*Id.*, emphasis omitted; *see also id.* at 16–17.) We do not find this argument persuasive of error.

[E]ven assuming *arguendo* that Busch’s user profile is not interpreted as a contact, the claim limitation is nevertheless met because Busch also teaches a contact via identification of a [sic] another type of contact (i.e., other than within a user profile) by the disclosed features directed to retrieving/identifying the name of a business associated with the location of the user’s mobile device . . . and retrieving a data record for the contact.

(Answer 7, emphasis omitted.)

In view of the above, we are not persuaded that the Examiner erred in rejecting claim 1 under § 102(b). Claims 2, 3, 5–8, 10–13, and 15 are not separately argued and fall with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

The § 103(a) rejection

Appellant argues that the rejection of dependent claims 4, 9, and 14 should not be sustained “for the reasons set forth in connection with claims 1, 6, and 11.” (Appeal Br. 19.)

For the reasons discussed above, we are not persuaded that the Examiner erred in rejecting claims 1, 6, and 11 and, thus, we are also not persuaded that the Examiner erred in rejecting claims 4, 9, and 14 which depend from claims 1, 6, and 11, respectively.

DECISION

The Examiner’s rejection of claims 1–15 under 35 U.S.C. § 101 is affirmed.

The Examiner’s rejection of claims 1–3, 5–8, 10–13, and 15 under 35 U.S.C. § 102(b) is affirmed.

The Examiner’s rejection of claims 4, 9, and 14 under 35 U.S.C. § 103(a) is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED